

ROBERT RAPKIN, ESQUIRE
Identification No. 61628
KIMMEL & SILVERMAN, P.C.
30 East Butler Pike
Ambler, Pennsylvania 19002
(215) 540-8888

Attorney for Plaintiff

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

JAMES M. DESIDERIO, JR.	:	
Plaintiff	:	
	:	
VS.	:	
	:	
WINNEBAGO INDUSTRIES	:	
AND	:	
FREIGHTLINER CUSTOM CHASSIS	:	NO. 02-CV-4677
AND	:	
FREIGHTLINER CUSTOM CHASSIS	:	
ALLIANCE	:	
AND	:	
CATERPILLAR, INC., ENGINE DIV.	:	
AND	:	
ALLISON TRANSMISSION	:	
AND	:	
MEYER'S CAMPERS	:	
DEFENDANTS	:	

**PLAINTIFF'S ANSWERS TO DEFENDANT
CATERPILLAR, INC.'S AFFIRMATIVE DEFENSES**

First Affirmative Defense: Denied as a conclusion of law. Further denied in that at all time relevant hereto Plaintiff has stated a claim against Defendant upon which relief can be granted.

Second Affirmative Defense: Denied as a conclusion of law. Further denied in that any damages sustained by Plaintiff was caused by the Defendant and/or Defendants as stated in Plaintiff's Complaint, which is incorporated herein by reference.

Third Affirmative Defense: Denied as a Conclusion of Law. The allegation of this paragraph constitutes a conclusion of fact and/or law to which no responsive pleading is required. However and to the extent there are any allegations contained herein, such allegations are specifically denied and strict proof is demanded at the time of trial.

Fourth Affirmative Defense: Denied as a Conclusion of Law. The allegation of this paragraph constitutes a conclusion of fact and/or law to which no responsive pleading is required. However and to the extent there are any allegations contained herein, such allegations are specifically denied and strict proof is demanded at the time of trial.

Fifth Affirmative Defense: Denied as a conclusion of law. Further denied in that at all times relevant hereto Plaintiff has brought suit within the applicable statute of limitations.

Sixth Affirmative Defense: Denied as a conclusion of law. Further denied in that at all times relevant hereto, Plaintiff acted reasonably and promptly to limit and cure his damages.

Seventh Affirmative Defense: Denied as a Conclusion of Law. The allegation of this paragraph constitutes a conclusion of fact and/or law to which no responsive pleading is required. However and to the extent there are any allegations contained herein, such allegations are specifically denied and strict proof is demanded at the time of trial.

Eighth Affirmative Defense: Denied as a Conclusion of Law. The allegation of this paragraph constitutes a conclusion of fact and/or law to which no responsive pleading is required. However and to the extent there are any allegations contained herein, such allegations are specifically denied and strict proof is demanded at the time of trial.

Ninth Affirmative Defense: Denied as a Conclusion of Law. The allegation of this paragraph constitutes a conclusion of fact and/or law to which no responsive pleading is required. However and to the extent there are any allegations contained herein, such allegations are specifically denied and strict proof is demanded at the time of trial.

Tenth Affirmative Defense: Denied as a conclusion of law. Further denied in that Plaintiff's claims are specifically permitted under the said Act.

Eleventh Affirmative Defense: Denied as a conclusion of law. Further denied in that Plaintiff's claims are specifically permitted under the said Act.

Twelfth Affirmative Defense: Denied as a Conclusion of Law. The allegation of this paragraph constitutes a conclusion of fact and/or law to which no responsive pleading is required. However and to the extent there are any allegations contained herein, such allegations are specifically denied and strict proof is demanded at the time of trial.

Thirteenth Affirmative Defense: Denied as a conclusion of law. Plaintiff denies he made any modification to the vehicle and strict proof thereof is demanded. Further denied in that

Plaintiff denies having abused or neglected the vehicle. Further denied in that any damages sustained was caused by the Defendant and/or Defendants as stated in Plaintiff's Complaint, which is incorporated herein by reference.

Fourteenth Affirmative Defense: Denied as a Conclusion of Law. The allegation of this paragraph constitutes a conclusion of fact and/or law to which no responsive pleading is required. However and to the extent there are any allegations contained herein, such allegations are specifically denied and strict proof is demanded at the time of trial.

Fifteenth Affirmative Defense: Denied as a Conclusion of Law. The allegation of this paragraph constitutes a conclusion of fact and/or law to which no responsive pleading is required. However and to the extent there are any allegations contained herein, such allegations are specifically denied and strict proof is demanded at the time of trial.

Sixteenth Affirmative Defense: Denied as a Conclusion of Law. The allegation of this paragraph constitutes a conclusion of fact and/or law to which no responsive pleading is required. However and to the extent there are any allegations contained herein, such allegations are specifically denied and strict proof is demanded at the time of trial.

Seventeenth Affirmative Defense: Denied as a Conclusion of Law. The allegation of this paragraph constitutes a conclusion of fact and/or law to which no responsive pleading is required. However and to the extent there are any allegations contained herein, such allegations are specifically denied and strict proof is demanded at the time of trial.

Eighteenth Affirmative Defense: Denied as a Conclusion of Law. The allegation of this paragraph constitutes a conclusion of fact and/or law to which no responsive pleading is required. However and to the extent there are any allegations contained herein, such allegations are specifically denied and strict proof is demanded at the time of trial.

Nineteenth Affirmative Defense: Denied as a Conclusion of Law. The allegation of this paragraph constitutes a conclusion of fact and/or law to which no responsive pleading is required. However and to the extent there are any allegations contained herein, such allegations are specifically denied and strict proof is demanded at the time of trial.

Defenses Reserved: Denied as a Conclusion of Law. The allegation of this paragraph constitutes a conclusion of fact and/or law to which no responsive pleading is required. However

and to the extent there are any allegations contained herein, such allegations are specifically denied and strict proof is demanded at the time of trial.

WHEREFORE, the Plaintiff respectfully demands judgment be entered in Plaintiff's favor and against Defendant.

Respectfully Submitted,

By:

ROBERT RAPKIN, Esquire
Attorney for Plaintiff
KIMMEL & SILVERMAN, P.C.
Attorney No. 61628
30 East Butler Pike
Ambler, Pennsylvania 19002
(215) 540-8888

VERIFICATION

ROBERT RAPKIN Esquire, states that he is the attorney for the Plaintiff herein; that he is acquainted with the facts set forth in the foregoing Answer to Affirmative Defenses; and that same are true to the best of his knowledge, information and belief. This statement is being made subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn falsification to authorities.

ROBERT RAPKIN
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I, ROBERT RAPKIN, Esquire, counsel for Plaintiff, do hereby certify that on the 30th January, 2003, I served all parties with true and correct copies of the foregoing Answer to Affirmative Defenses, by placing same in the United States Mail, First Class, Postage Paid addressed as follows:

Charles C. Sweedler, Esquire
Montgomery, McCracken, Walker & Rhoads
123 South Broad Street
Philadelphia, PA 19109

Michael B. Pullano, Esquire
McCarter & English
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KIMMEL & SILVERMAN, P.C.

By:

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